



Sent to Council:

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MAR 15 2011  
City Manager's Office

## Memorandum

**TO: HONORABLE MAYOR  
AND CITY COUNCIL**

**FROM: Nadine Nader**

**SUBJECT: Early Council Packet**

**DATE: March 15, 2011**

Approved

Date

3/15/11

### **EARLY DISTRIBUTION COUNCIL PACKET FOR MARCH 29, 2011**

Please find attached the Early Distribution Council Packet for the March 29, 2011 Council Meeting.

#### **4.x Actions Related to the Installation of a Fuel Cell Based Energy Saver System for the Ice Centre.**

##### **Recommendation:**

- (a) Approve a first amendment to the Amended and Restated Lease and Management Agreement to provide \$2,000,000 from the Ice Center Revenue Fund to Silicon Valley Sports and Entertainment, Inc., on behalf of San Jose Arena Management, Manager of the Ice Centre of San Jose, for the purchase and installation of a fuel cell based Energy Saver System for the Ice Centre.
- (b) Adopt the following Appropriation Ordinance amendments in the Ice Centre Revenue Fund (Fund 432):
  - (1) Establish an appropriation to the Finance Department in the amount of \$2,000,000 for Fuel Cell Equipment, and
  - (2) Decrease the Ending Fund Balance by \$2,000,000.

CEQA: Exempt, File No. PP11-031. Council District 7. (Economic Development/City Manager's Office)

**TO BE DISTRIBUTED SEPARATELY**

**4.x Public Hearing and Actions Related to the Ford and Monterey Special Needs Apartments and Family Apartments.**

**Recommendation:** Hold a public hearing and adopt a resolution:

- (a) Accepting the Summary 33433 Report pursuant to the California Health and Safety Code Section 33433 for the groundleasing and development of the 3.06 acre City-owned property located at the north side of Ford Road approximately 550 feet east of Monterey Road (the "Site") for the Ford Road and Monterey Special Needs Apartments and Family Apartments (the "Project"), under the terms and conditions of the proposed Disposition and Development Agreement ("DDA");
- (b) Approving a DDA between the City of San Jose and Eden Housing, Inc., or its affiliate, along with a 75-year Groundlease with Eden Housing, Inc., or its affiliate, of the Site for the Project, and authorizing the Director of Housing to execute the DDA, the Groundlease, and any other documents regarding the leasehold disposition of the property;
- (c) Authorizing the Director of Housing to negotiate and execute an amended consortium agreement with The Housing Trust of Santa Clara County ("HTSCC") under the Neighborhood Stabilization Program 2 ("NSP2") in an amount up to \$3,000,000 for construction of the 20-unit Ford and Monterey Special Needs Apartments ("Project" or "Phase I");
- (d) Approving a funding commitment to Eden Housing, Inc., or its designated affiliate ("Eden") for up to \$3,000,000 for a Project construction/permanent loan funded from NSP2 (Fund 448);

CEQA: Mitigated Negative Declaration, File No. PDC09-022. (Housing/Finance)

These items will also be included in the Council Agenda Packet with item numbers.

/s/  
NADINE NADER  
Assistant to the City Manager



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Leslye Corsiglia

**SUBJECT:** SEE BELOW

**DATE:** March 10, 2011

Approved

Date

3-15-11

**COUNCIL DISTRICT:** 2  
**SNI AREA:** N/A

**SUBJECT: PUBLIC HEARING TO APPROVE A DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE GROUNDLEASING OF CITY-OWNED PROPERTY TO EDEN HOUSING, INC., AND APPROVAL OF FUNDING COMMITMENTS AND RELATED DOCUMENTS, FOR THE FORD AND MONTEREY SPECIAL NEEDS APARTMENTS AND FAMILY APARTMENTS BEING DEVELOPED BY EDEN HOUSING, INC.**

## RECOMMENDATION

It is recommended that the City Council hold a public hearing and adopt a resolution:

1. Accepting the Summary 33433 Report pursuant to the California Health and Safety Code Section 33433 for the groundleasing and development of the 3.06 acre City-owned property located at the north side of Ford Road approximately 550 feet east of Monterey Road (the "Site") for the Ford Road and Monterey Special Needs Apartments and Family Apartments (the "Project") , under the terms and conditions of the proposed Disposition and Development Agreement ("DDA");
2. Approving a DDA for the Project between the City of San Jose and Eden Housing, Inc., or its affiliate, including a 75-year Goundlease with Eden Housing, Inc., or its affiliate, of the Site, and authorizing the Director of Housing to execute the DDA, the Groundlease, and any other documents regarding the leasehold disposition of the property;
3. Authorizing the Director of Housing to negotiate and execute an amended consortium agreement with The Housing Trust of Santa Clara County ("HTSCC") under the Neighborhood Stabilization Program 2 ("NSP2") in an amount up to \$3,000,000 for construction of the 20-unit Ford and Monterey Special Needs Apartments ("Project" or "Phase I");

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4. Approving a funding commitment to Eden Housing, Inc., or its designated affiliate ("Eden") for up to \$3,000,000 for a Project construction/permanent loan funded from NSP2 (Fund 448);

### **OUTCOME**

City Council approval of the amended consortium funding agreement with HTSCC would allow up to \$3,000,000 in NSP2 funds, originally stipulated for acquisition and rehabilitation of foreclosed residences, to be used for construction and permanent financing of the Project.

The recommended action would assist the City in meeting the NSP2 requirement to set-aside \$6,250,000, or 25 percent of the \$25,000,000 grant awarded to the consortium, for housing targeted to Very Low-Income (VLI) households. Further, the recommended action would enable 19 units of affordable housing (and one manager's unit) to be built in the City that will be affordable to Extremely Low-Income (ELI) and Very Low-Income (VLI) special needs individuals and families with incomes between \$21,750 and \$41,400 per year, respectively.

City Council approval of the funding commitments to Eden would result in sufficient financing commitments for the Ford and Monterey Project to go forward at this time, take advantage of the project's awarded U.S. Department of Housing and Urban Development (HUD) financing, and meet the required NSP2 project completion and occupancy deadline.

### **BACKGROUND**

In June 2006, the City Council authorized the Housing Department purchase of a 3.06-acre vacant site from the Santa Clara Valley Transportation Authority. This site, located on the north side of Ford Road approximately 550 feet east of Monterey Road (the "Ford and Monterey site"), is intended for development of an affordable housing project on an under utilized vacant property located between an existing shopping center on Monterey Road, and an existing single-family residential neighborhood to the east in South San Jose.

After completion of a competitive RFQ process in 2008, Eden was recommended as the preferred developer of the Ford and Monterey affordable housing development. On December 9, 2008, the City Council approved Eden to enter into exclusive negotiations for the site and to execute a ground lease option agreement with the City for development of 75 family affordable apartments and 20 units of special needs housing apartments. Eden has subsequently obtained Planned Development (PD) Zoning and PD Permit approval for this project.

The subject of this Memorandum, the Phase 1 site, is an approximately 28,681 square feet (approximately 0.66 acres) portion of the entire 3.06 acre Ford and Monterey site to be subdivided from the entire site that is currently owned by the City. The development of the 75 family apartments cannot proceed at this time due to lack of financing.

In order to develop the Ford and Monterey site in phases, Eden has already obtained a PD amendment and a Planned Tentative Map so that the Special Needs Apartments can be constructed with Federal funds before development of the Phase II family apartments, which does not yet have its financing assembled.

At the Redevelopment Agency/City Council/Financing Authority Special meeting on January 19, 2011, the Housing Department obtained approval to commit 20% Low and Moderate Housing Funds totaling \$1,430,000 to Eden for the Project as follows:

- A conditional financing commitment of \$190,000 for Affordable Housing Program (AHP), in case the AHP award is not obtained in time to meet HUD's financing deadlines;
- A conditional financing commitment for the \$500,000 HTSCC loan, in case HUD does not approve HTSCC as a private lender; and,
- A bridge loan of \$740,000 to cover Phase II infrastructure costs that must be completed during the Phase I construction, per the City's requirements.

Total project cost of the Special Needs Apartments is currently budgeted at \$7,463,017. Eden has obtained a financing commitment for a HUD 811 Capital Advance first mortgage construction and permanent loan of \$2,972,000 for special needs populations. The HUD 811 loan also carries a HUD Project Rental Assistance Contract ("PRAC") of \$109,300 per annum for three year, which is expected to be renewed after the three-year period. In addition to City financing, Eden is seeking an Affordable Housing Program forgivable loan from the Federal Home Loan Bank.

## **ANALYSIS**

The Special Needs population at this project will consist of persons with developmental disabilities (DD). Developmental disabilities are mental or physical disabilities and include mental retardation, autism, cerebral palsy, genetic disorders such as Down syndrome and other conditions. Based on the City of San Jose Housing Element 2007-2014 there are 45,260 households headed by a person with a disability and of these disabled households, 11,335 disabled renters experienced housing problems. Statewide, approximately 73% of DD individuals receiving state services lived in the family home with a parent or other related caregiver in December 2007, according to the California Department of Developmental Services Fact Book (October 2008).

Persons with DD seeking housing arrangements outside the family are limited to residences offering an appropriate level of care and/or support. Ford & Monterey Special Needs Housing will provide the kind of supportive housing situation that will allow them to live independently. Persons with DD typically have limited incomes, such as Supplemental Security Income for people with disabilities. While some individuals are able to work at a job, those jobs are almost without exception low-paying.

At the Ford and Monterey Special Needs Apartments, the incomes of households will range between \$21,750 and \$41,400 per year. Of the Project's 20 units, 18 will be affordability-

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restricted to VLI households earning up to 50% of Area Median Income (AMI), with one non-special needs unit restricted to 50% AMI. There will also be one unrestricted manager's unit. In fact, the affordable units will be underwritten and operated at much deeper affordability levels to include 17 ELI units affordable to households at or below 25% AMI and two (2) VLI units affordable to households at or below 45% AMI. Sixteen (16) units will be one-bedroom units and four (4) units will be two-bedroom units. Affordability restrictions deeper than 50% of AMI are not being imposed because the HUD 811 program requires affordability restrictions be set no lower than 50% AMI.

Under terms approved by the City Council for the ground lease Option, the site will be conveyed from the City to the Authority and leased to Eden's development entity under a 75-year ground lease. For the first 55 years, the rent will be \$1.00 per year. Continued ownership of the land by the City or the Authority is preferable in order to better control long-term affordability of the Project and control over future developments at that location. The remainder of the Ford and Monterey site is anticipated to be leased to the Phase II Eden development entity when the Phase II construction funding is available.

There are several reasons that Eden's planned 20-unit special needs housing project is an ideal candidate to receive an NSP2 loan. First, the Project meets the criteria under which the Consortium received its NSP2 award in that it serves very low-income households. Second, NSP2 usage and occupancy deadlines are very strict, and it is expected that Eden can meet HUD's requirement to complete construction and achieve 100% occupancy by the February 11, 2013 deadline. If deadlines are not met, HUD can recapture the NSP2 award of up to the full amount of the award of \$25 million. Eden also conducted a NEPA study in anticipation of its federal financing through the HUD Loan, which is required under NSP2 and would have otherwise delayed the timeframe. Finally, the Project had already gone through the City's RFQ competitive selection process for this site, which process adheres to HUD's guidance under this program.

The requested approval for pledging the City-owned 3.06 acre land parcel as collateral for the HTSCC predevelopment loan is necessary to enable Eden to obtain financing to pay costs of predevelopment prior to construction loan closing. The 3.06 acre land parcel will be subdivided. The City will execute an intercreditor agreement with HTSCC to provide for transfer of the collateral assignment to the Phase I site subsequent to the subdivision of the larger parcel and require HTSCC to subordinate to the City construction and permanent loan and other Project financing.

Due to the deep affordability of the Project, an appraisal being prepared for HUD is expected to result in a combined loan to value that will be significantly higher than the City's loan-to-value ("LTV") maximum guideline of 100%. However, this result is considered acceptable since debt service payments are not expected given the special needs nature of the residents, which will result in limited rent revenues.

Finally, use of the City's limited resources is justified for a project such as this one. Housing special needs residents requires extremely low rents, making the need for subsidy significant. There is a significant need for these units as they can not be produced by the housing market

without a subsidy. The City's funds are being leveraged by the other sources, including scarce rental subsidies such as those being provided in conjunction with the HUD 811 loan.

### Predevelopment Loan

As previously mentioned, on January 19, 2011, the Redevelopment Agency/City Council/Financing Authority approved a \$1,430,000 commitment of 20% Low and Moderate Housing Funds to Eden Housing for this project. This commitment included a conditional financing commitment for the \$500,000 HTSCC loan, in case HUD does not approve HTSCC as a private lender. Since that time, Eden has been working to obtain HUD approval for the loan from HTSCC. However, HUD has expressed concerns regarding using the Housing Trust as a funding source. Given the tight timeline to meet the NSP2 completion deadline, staff is recommending City funds for this project.

### Economic Development Benefits

Taking actions to further this project will benefit San José economically in three ways. First, the developer expects to pay City fees of \$600,000 in order to proceed with the development process. Second, total local impacts for communities in the area are defined as benefits of the direct construction activity itself as well as the impact of local residents who earn money from the construction activity and spend part of it within the area. According to a 2009 study by the National Association of Homebuilders (NAHB) on the economic benefits to local areas for multifamily low-income housing tax credit-funded construction, 20 units of family housing are estimated to generate over \$1.6 million of local benefits in the first year and approximately \$0.6 million each year thereafter. Third, according to the NAHB metrics, it is also anticipated that proceeding with and completing the development of the Project will create 30 local jobs in San José in the first year, directly and indirectly, and 8 local jobs each year thereafter.

### 33433 Analysis

The attached Summary Report, pursuant to Section 33433 of the California Redevelopment Law, has been prepared by Keyser Marston Associates. This report, along with a copy of the proposed Disposition and Development Agreement (DDA) was made available for inspection as required by California Redevelopment Law on February 28, 2011. The Summary 33433 Report summarizes the key terms of the proposed DDA, the cost of the agreement to the City, the fair reuse value, and conformance with the Redevelopment Agency's Five Year Implementation Plan. Based on the analysis provided in the Summary Report, the consideration to be received by the City, is not less than the fair market value at its highest and best use.

### EVALUATION AND FOLLOW-UP

The Housing Department posts quarterly reports on the status of its subsidized construction projects to its website, [www.sjhousing.org](http://www.sjhousing.org). If approved, the Ford and Monterey Special Needs Apartments would be included in these reports.

## **POLICY ALTERNATIVES**

To arrive at this proposal, staff considered the following options:

***Alternative #1: Deny or delay the requested funding commitment.***

**Pros:** The funds being requested could be used for other affordable housing projects and programs.

**Cons:** The subject project is the only multifamily project that is able to meet the NSP2 guideline requiring project construction completion and occupancy by the program deadline of February 11, 2013. Delaying funding of the project may result in a missed opportunity for NSP2 funding resources for multifamily housing. Additionally, the City has already entered into a lease option agreement with Eden Housing to lease the land under a long-term lease and is expected to proceed with a second phase 75-unit family affordable apartment project, at such time as the City is able to provide gap financing.

**Reason for not recommending:** The proposed project will help to meet the demand for deeply affordable special needs housing that is affordable to ELI and VLI households and will help the City to fulfill its affordable housing goals. Approval of this project financing will ensure that this very important affordable housing project will move ahead in a timely manner and will leverage NSP2 and HUD funds.

## **PUBLIC OUTREACH/INTEREST**

✓ **Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater.** (Required: Website Posting)

☐ **Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.** (Required: E-mail and Website Posting)

☐ **Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.** (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

This item meets Criterion 1, Requires Council action on the use of public funds equal to \$1 million or greater. A copy of the City Council memo will be posted to the City's website.

Consistent with the City Council Public Outreach Policy, a sign was posted on-site by the developer, Eden Housing, Inc. to notify neighbors of the proposed development and planned community meetings to be held by the developer. Meeting notices were also published via email to the neighborhood association, Silver Leaf Neighborhood Coalition. A preliminary community neighborhood meeting was held February 3, 2009, followed by five additional community meetings April 18, June 24, July 15, September 1, and September 16, 2009. The meetings



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presented preliminary design concepts to the community and gathered feedback. The main concerns expressed related to affordable housing's impact on surrounding property management issues and impact on neighborhood property values. Residents living in homes adjacent to the site also expressed concerns about privacy, as the original site plan had placed buildings adjacent to the property line. Eden revised the site plan before submitting a PD zoning application to move the buildings away from this property line to respond to community concerns. This memorandum will be posted on the City's website for the March 29, 2011 City Council agenda.

### **COORDINATION**

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

### **FISCAL/POLICY ALIGNMENT**

This expenditure is consistent with the Housing Department's *Five-Year Investment Plan for Fiscal Years 2007/08-2011/12* in increasing the supply of affordable housing, and with the City's *Consolidated Plan, 2005-10* in providing units for very low- and extremely low-income households and for large renter households.

### **COST SUMMARY/IMPLICATIONS**

#### **1. ESTIMATED COSTS OF COMMITMENT:**

<b><u>USES</u></b>	<b><u>AMOUNT</u></b>
Land (ground lease)	\$10,100
Hard Costs	2,190,105
Soft Costs	799,795
<b>TOTAL</b>	<b>\$3,000,000</b>

#### **2. SOURCES OF FUNDING: Fund 448 – Multi-Source Housing Fund**

#### **3. FISCAL IMPACT: No ongoing fiscal impact.**

**BUDGET REFERENCE**

Fund #	Appn. #	Appn. Name	Total Appn.	Amt. For Contract	2010-11 Adopted Operating Budget	Last Budget Action (Date, Ord. No.)
448	3790	Recovery Act – Neighborhood Stabilization Program 2	\$8,973,940	\$3,000,000	N/A	10/19/2010 Ord. #28829

**CEQA**

Mitigated Negative Declaration, PDC09-022

/s/

LESLYE CORSIGLIA  
Director of Housing

For questions, please contact LESLYE CORSIGLIA, Director of Housing, at 408-535-3851..

attachments

## ATTACHMENT 1

### Anticipated Project Timeline Ford and Monterey Special Needs Housing

City Council Approval of Funding Commitment	March 29, 2011
Federal Home Loan Bank Application for Affordable Housing Program Award	April 2011
HUD 811 Firm Commitment Application	August 2011
HUD 811 Receipt of Funds and Start of Construction	January 2012
Completion of Construction and Full Occupancy	January 2013

ATTACHMENT 2  
MAP  
Ford and Monterey Site

